

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

DELTA AIR LINES, INC.

FAA Order No. 97-21

Served: May 28, 1997

Docket No. CP95WP0129

DECISION AND ORDER

Complainant Federal Aviation Administration (FAA) has appealed from the initial decision of Administrative Law Judge Ann Z. Cook¹ finding that Complainant failed to sustain its burden of proving that Respondent Delta Air Lines, Inc. (Delta) violated 14 C.F.R. § 121.153(a)(2) by operating an aircraft with one of the cockpit indicator lights inoperative.² This decision grants Complainant's appeal.

On August 24, 1993, Delta Air Lines Flight 157 flew from Los Angeles to Honolulu. Prior to the flight, a Delta employee noted that the number 2 bus galley power switch indicator light in the cockpit of the Lockheed L-1011 aircraft was not

¹ A copy of the law judge's written initial decision is attached.

² Section 121.153(a)(2) provides, in relevant part, as follows:

(a) [N]o certificate holder may operate an aircraft unless that aircraft--

(2) Is in an airworthy condition and meets the applicable airworthiness requirements of this chapter, including those relating to identification and equipment.

working.³ Although the switch itself was working, the indicator light on the switch did not illuminate when the galley equipment was de-powered.⁴

The Minimum Equipment List (MEL) for the aircraft permits Delta to operate the aircraft with inoperative instruments or equipment under certain specified conditions.⁵ A Delta mechanic released the aircraft for the flight to Honolulu under a provision in the Minimum Equipment List concerning lights that illuminate the cockpit. Delta has conceded both that the light was not working and that its mechanic's reference to the Minimum Equipment List was incorrect. A Delta mechanic corrected the problem in Honolulu, before any further flights.⁶ Complainant filed the instant civil penalty action, alleging that Delta operated Flight 157 from Los Angeles to Honolulu with an unairworthy aircraft.

After a hearing, the law judge determined that Complainant failed to prove that Delta flew an unairworthy aircraft in violation of Section 121.153(a)(2). The law judge noted correctly that to be airworthy, an aircraft must both conform to its type design and be in condition for safe flight.⁷ The law judge went on to find that Complainant did not sustain its burden of proving that the aircraft was out of

³ There are three bus galley power switches in the cockpit of the L-1011. (Tr. 26.)

⁴ When working properly, the indicator light illuminates when the galley equipment is de-powered.

⁵ The Minimum Equipment List and the letter of authorization [allowing for the use of the MEL] constitute a supplemental type certificate for the aircraft. 14 C.F.R. § 91.213(a)(2).

⁶ The replacement of the number two remote control circuit breaker resolved the problem; the indicator light itself did not need to be replaced.

⁷ Initial Decision at 2, citing In the Matter of Watts Agricultural Aviation, d/b/a Growers Air Service, FAA Order No. 91-8 (April 11, 1991), *review denied*, Watts Agricultural Aviation v. FAA, reported as table case at 977 F. 2d 594, 1992 U.S. App. LEXIS 36181, *full-text slip opinion reported at* 1992 U.S. App. LEXIS 25020 (9th Cir. 1992).

conformity with its type certificate. The law judge also found that the inoperative indicator light did not affect the safety of Delta Flight 157. The law judge dismissed the case with prejudice, leading Complainant to file the instant appeal.

Air carriers may not take off with any inoperable instruments or equipment unless an approved Minimum Equipment List exists that so permits. 14 C.F.R. § 121.628. It has long been the agency's position that without an applicable provision in the Minimum Equipment List, if an instrument or piece of equipment is inoperable, then the airworthiness certificate for the aircraft is ineffective.⁸

Delta's position in this case has been that the light was not required to be working, even though there was no specific provision in the Minimum Equipment List authorizing operation with the light inoperable, because the light was too insignificant to affect the airworthiness of the aircraft. At the hearing, Delta introduced its standard practice manual, which states that the Minimum Equipment List "may not include items which do not affect the airworthiness (Flight Safety) of the aircraft such as galley equipment, entertainment systems, passenger convenience items and certain cargo compartment items"

⁸ See, e.g., Letter to Alan R. Kaufman from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division (May 11, 1992) in 3 Federal Aviation Decisions, at I-251 (Clark Boardman Callaghan 1993) ("[a]bsent an applicable MEL provision, if a piece of equipment is missing or inoperative, the airworthiness certificate is ineffective"); Letter to John L. Geitz from Donald D. Engen, FAA Administrator (April 5, 1986), in 2 Federal Aviation Decisions, at I-104 (Clark Boardman Callaghan 1993) ("[p]ast and present interpretation of these regulations is that an aircraft is not airworthy if any of its installed equipment is missing or inoperative . . . absent a change in type design to address missing or inoperative equipment, installed items of equipment, including optional items, must be operative for all operations to maintain the validity of the airworthiness certificate"); Letter to Nicholas A. Castruccio from Edward P. Faberman, Assistant Chief Counsel (April 23, 1981), in 1 Federal Aviation Decisions, at I-547 (Clark Boardman Callaghan 1993) ("to maintain the validity of the airworthiness certificate without a change to the type certificate, [the instrument at issue] must be operating for all operations").

(Respondent's Exhibit 1.) Delta has characterized the indicator light as falling within the categories of "galley equipment" and "passenger convenience items."

The law judge did not specifically rule on the issue of whether the indicator light was a passenger convenience item, as argued by Delta, and therefore did not have to be listed in the Minimum Equipment List. Referring to a case issued by the National Transportation Safety Board (NTSB), Administrator v. Calavaero, 5 NTSB 1099 (1986), the law judge ruled in Delta's favor, stating that "an inoperative indicator light to a passenger convenience system which operated as designed, minus the light, would not make the aircraft unairworthy." (Initial Decision at 5.) The law judge further stated, "I am not persuaded by the evidence on record that the light indicating to the crew the status of the power to an oven or coffee pot in the second galley is required by the type certificate." (*Id.*)

The law judge erred in holding that Complainant failed to prove that the aircraft was unairworthy. It is held that the preponderance of the evidence shows that the aircraft was unairworthy under both prongs of the airworthiness test.⁹ Contrary to Delta's argument, a light in the cockpit, which indicates to the flight crew whether power is going to the galley, is neither galley equipment nor a passenger convenience item. Cockpit equipment designed solely for the use of the pilots cannot be considered galley equipment or a passenger convenience item.¹⁰

⁹ In the Matter of Valley Air Services, FAA Order No. 96-15, 1996 FAA LEXIS 1226, at *17 (May 3, 1996); In the Matter of America West Airlines, FAA Order No. 96-3, 1996 FAA LEXIS 1064, at *45 (February 13, 1996); In the Matter of Watts Agricultural Aviation, Inc., d/b/a Growers Air Service, FAA Order No. 91-8, 1991 FAA LEXIS 330, at *19 (April 11, 1991), *review denied*, Watts Agricultural Aviation, Inc., d/b/a Growers Air Service v. Busey, Administrator, Federal Aviation Administration, reported as table case at 977 F.2d 594, 1992 U.S. App. LEXIS 36181, *full-text slip opinion reported at* 1992 U.S. App. LEXIS 25020 (9th Cir. 1992).

¹⁰ Expert testimony is evaluated on the basis of its logic, depth, and persuasiveness. In the Matter of Valley Air Services, FAA Order No. 96-15 at 7 (May 3, 1996). The testimony of

Thus, Delta was without authority under the Minimum Equipment List to operate the aircraft with the light inoperative. As a result, the aircraft was out of conformity with its type design,¹¹ and its type certificate was ineffective.¹²

Moreover, the inoperative indicator light reduced the margin of safety that conformity with the type design is intended to provide. As the testimony at the hearing revealed, if one or more of the three engine-driven generators failed, the crew would need to de-power certain systems such as the galley equipment quickly, so that there would be sufficient power for essential systems like the flight

Delta's witnesses, characterizing the light as a passenger-convenience type item (*see, e.g.*, Tr. 117), is unpersuasive and illogical.

¹¹ Although the law judge stated that it was impossible to find that Delta had not conformed to the type design because Complainant did not introduce the type design at the hearing (Initial Decision at 5), Delta's own expert witness conceded that the light at issue was part of the type design:

Complainant's counsel: And that light was part of the type design of the aircraft?

Mr. Elick: In its physical form, yes. It is on board the aircraft to meet its type certification, that's correct.

(Tr. 106.)

¹² Regarding the law judge's reference to Administrator v. Calavaero, 5 NTSB 1099 (1986), as the law judge correctly noted, decisions of the National Transportation Safety Board are not binding upon the Administrator. However, even if they were, this case is distinguishable from Calavaero.

In Calavaero, the Board stated: "we do not agree that every scratch, dent, 'pinhole' of corrosion, missing screw, or other defect, no matter how minor or where located on the aircraft, dictates the conclusion that . . . the aircraft no longer conforms to its type certificate." *Id.*, at 1101. The Board then went on to find that "[i]n this case the Administrator essentially made no effort to show that the alleged defects or discrepancies had an adverse impact on the level of safety that an aircraft's conformity with its type certificate is intended to insure, or to counter the substantial evidence adduced by respondent that they had not had such an impact." *Id.* Also, in Calavaero, the law judge found that the Complainant had failed to prove many of the alleged discrepancies.

Unlike Calavaero, Complainant, in the instant case, presented ample evidence regarding the extra level of safety provided by having a switch that illuminates when the power is turned off to the galley. As explained further in the text of this decision, Complainant proved that the inoperative indicator light had an adverse impact on the level of safety that conformity with the type certificate is intended to provide.

instruments. (Tr. 33-34.) Complainant's expert testified that "the galley buses power ovens, power coffee pots that require a large electrical draw a lot of times and you want to get rid of that draw." (*Id.* at 34.) With the indicator light inoperative, the flight engineer would not be able to determine as quickly or as readily whether the bus was powered. (*Id.*) It is no answer to say that the flight engineer could rely on the position of the switch. There is but a 1/4" difference between the "on" and "off" positions of the switch. (Tr. 81.) In an emergency, when adrenaline levels are high and when each second counts, the flight crew needs to be able to discern at a glance, without any question, where power is going.

For these reasons, the law judge erred in failing to find a violation of 14 C.F.R. § 121.153(a)(2). Under all the circumstances of this case, a \$4,000 civil penalty is appropriate.¹³



BARRY L. VALENTINE
Acting Administrator
Federal Aviation Administration

Issued this 22 day of MAY, 1997.

¹³ Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. § 46110), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1996).